

Rental Terms and Conditions

1. Application

- 1.1. The Rental Contract applies to the hire of the Vehicle to the Hirer and comprises the Rental Application Form, Rental Agreement, Terms and Conditions and Vehicle Assessment Form.
- 1.2. Capitalised terms used in the Rental Contract have the meaning given to them in clause 22.

2. Rental Period

- 2.1. The Rental Period will commence on the Rental Start Date and, subject to the Minimum Term, will continue until it is terminated in accordance with clauses 6.4, 14.1 or 14.2.

3. Uber Services

- 3.1. The Hirer confirms that the Hirer is a registered Uber driver in New Zealand, and intends to use the Vehicle predominantly for the purposes of providing Uber services.
- 3.2. The Hirer must provide immediate written notice to the Owner if the Hirer ceases to be a registered Uber driver in New Zealand or ceases to use the Vehicle predominantly for the purpose of providing Uber Services.

4. Consumer Lease

- 4.1. Notwithstanding clause 3, if the Hirer is a natural person and the Rental Period is a period of one year or more, the Rental Contract may be a consumer lease under the Credit Contracts and Consumer Finance Act 2003. The Hirer acknowledges that:
 - a) The Rental Contract does not have a fixed term and accordingly it does not have a fixed number of Weekly Rental payments;
 - b) The amount payable by the Hirer on termination of the Rental Contract in accordance with clause 14, will comprise:
 - i. The final Weekly Rental payment, adjusted on a proportionate basis to reflect the Rental Start Date; and
 - ii. Any additional unpaid amounts that are owed to the Owner in accordance with the terms of the Rental Contract; and

- c) The Hirer does not have the option to purchase the Vehicle under the Rental Contract.

5. Ownership of Vehicle

- 5.1. The Owner retains title to the Vehicle at all times, and the Hirer must not agree, attempt, offer or purport to sell, assign, pledge, hire or otherwise part with or attempt to part with possession, or otherwise deal with the Vehicle.
- 5.2. For the purposes of the PPSA, the Rental Contract may create a deemed security interest in favour of the Owner in any Vehicle leased by the Hirer from time to time from the Owner (the deemed interest).
- 5.3. No deemed interest created under the Rental Contract is discharged, nor are the Hirer's obligations in respect of a deemed interest affected by the validity or enforceability of the Rental Contract, or anything else that, but for this clause, may have discharged the Rental Contract or affected the Hirer's obligations under the Rental Contract.
- 5.4. On the request of the Owner, the Hirer must, at its own cost, promptly execute and deliver to the Owner all documents, and do anything else that the Owner deems appropriate, to secure to the Owner the full benefit of its rights under the Rental Contract.
- 5.5. The Owner may register a financing statement under the provisions of the PPSA to protect its deemed interest under the Rental Contract. The Hirer will promptly provide such information reasonably required by the Owner to enable a financing statement to be registered.
- 5.6. The Hirer waives its right to receive a copy of a verification statement under section 148 of the PPSA in respect of any financing statement or financing change statement registered by the Owner.
- 5.7. The Hirer undertakes not to change its name without giving at least 14 days' prior written notice to the Owner.
- 5.8. The Hirer and the Owner acknowledge and agree that for the purposes of section 105 of the PPSA, the Rental Contract does not secure payment or performance of an obligation (in each case, within the meaning of the PPSA).

6. Payments by Hirer

- 6.1. The Hirer authorises the Owner to deduct all amounts due to the Owner from the Hirer, in accordance with this Rental Contract, by direct bank debit from a bank account advised by the Hirer to the Owner. The Owner will use reasonable endeavours to (but is not required to) provide prior notification to the Hirer of the amount of each direct debit by text message or other mobile phone application notification.
- 6.2. The Hirer must pay the Owner the Weekly Rental on the agreed day each week during the Rental Period. The first such payment will be adjusted on a proportionate basis to reflect the Rental Start Date. The Hirer agrees that if the Vehicle is not returned on the Return Date, the Hirer will continue to pay the Weekly Rental (calculated on a daily basis) in accordance with clause 15.4c) until the Vehicle is returned.

- 6.3. The Hirer must pay any additional amounts payable by the Hirer pursuant to the Rental Contract as they arise from time to time in accordance with the Rental Contract. Subject to clauses 7.1 and 19, payment will be due the following week.
- 6.4. The Owner may increase the Weekly Rental during the Rental Period by providing 30 days' prior written notice to the Hirer ("**Notice**"). If the Hirer does not accept any such increase it may terminate the Rental Contract on notice to the Owner within 14 days from receipt of the Notice. If the Hirer does not terminate the Rental Contract in accordance with this clause 6.4, the Hirer will be deemed to have accepted the increase in Weekly Rental and such increase will apply from the date specified in the Notice.
- 6.5. The Hirer is liable to pay all GST and other taxes, levies and other costs of a similar kind arising out of or in connection with the Hire of the Vehicle. Unless stated otherwise, all amounts are expressed exclusive of GST.
- 6.6. If the Hirer does not make payment in full when due, the Hirer must pay the Owner:
 - a) An Administration Fee for associated administration costs;
 - b) Interest calculated at a rate of 10% per annum on the total amount owing from the date on which the Owner was entitled to receive the money to the date of payment, whether before or after judgment;
 - c) All costs incurred by the Owner in the recovery of any overdue amount (including costs on a solicitor-client basis and any debt collection agency costs); and
 - d) All costs incurred by the Owner for the recovery of the Vehicle.
- 6.7. If the Hirer has a query or complaint in relation to any amount deducted by the Owner from the Hirer's bank account pursuant to the Rental Contract, the Hirer is invited to contact the Owner by calling 09 550 9966 or emailing info@moderideshare.co.nz.

7. Bond

- 7.1. A Bond, in the amount specified in clause 5 of the Rental Agreement must be paid by the Hirer in full prior to the Rental Start Date.
- 7.2. The Hirer authorises the Owner to deduct from the Bond any amounts owed by the Hirer to the Owner from time to time.
- 7.3. The Owner will fully refund the Bond (less any amounts the Owner is authorised to deduct under this Rental Contract) as soon as reasonably practicable following return of the Vehicle, provided that no amounts are owed by the Hirer to the Owner and the Vehicle is returned on time to the correct location, undamaged, in a clean condition and with a full fuel tank. Any refund of the Bond is not a waiver by the Owner of the Hirer's liability under the Rental Contract, and the Owner reserves the right to recover any amounts owed under the Rental Contract.
- 7.4. In the event of an Accident or other incident, the Hirer must pay the Owner an additional Bond, if required by the Owner.

- 7.5. If the Hirer has a query or complaint in relation to any amount deducted by the Hirer from the Bond, the Hirer is invited to contact the Owner by calling 09 550 9966 or emailing info@moderideshare.co.nz.

8. Distance Charge

- 8.1. The weekly travel distance allowance specified in the Rental Agreement has been included in the Weekly Rental. If the Hirer exceeds the weekly travel distance allowance, the Hirer will be liable for the Distance Charge.
- 8.2. The Hirer must report the odometer reading to the Owner each week. Any applicable Distance Charge will then be calculated by the Owner and charged to the Hirer on a weekly basis.

9. Use of the Vehicle

- 9.1. The Owner may from time to time (at is discretion) authorise additional Authorised Drivers to drive the Vehicle
- 9.2. The Hirer must not:
- a) Sublet or hire the Vehicle to any other person;
 - b) Allow the Vehicle to be driven by any person (including the Hirer) who:
 - i. Is not an Authorised Driver;
 - ii. Is under the influence of alcohol or drugs or has a blood alcohol level in excess of that permitted by law; or
 - iii. Does not have a valid drivers licence appropriate for the Vehicle;
 - c) Allow the Vehicle to be operated outside his or her authority;
 - d) Make any alterations to the Vehicle;
 - e) Operate the Vehicle (or allow it to be operated):
 - i. For any illegal purpose or in any race, speed test, rally or contest;
 - ii. In breach of the Land Transport Act 1998, Land Transport (Road User) Rules 2004, or any other act, regulations, rules, or bylaws relating to road traffic;
 - iii. For the transport of:
 - a. More than the number of passengers or more than the gross Vehicle mass specified in the certificate of loading for the Vehicle; or
 - b. Volatile liquids, gases, explosives or other corrosive or flammable materials;
 - iv. To tow or propel any other Vehicle, except any luggage trailer supplied by the Owner;
 - v. To transport any animal in the Vehicle, other than certified service or assistance animals such as guide dogs;

- f) Allow the Vehicle to be:
 - i. Submerged in water or brought into contact with salt water;
 - ii. Driven, off-road, on any beach or riverbed, on any driveway or other surface likely to damage the Vehicle; or
 - iii. Used in any water-crossing; or
 - iv. Driven on any Unsealed Road or on any of the following roads: Tasman Valley Rd (Mt Cook), Skippers Canyon Rd (Queenstown) or Ninety Mile Beach.
- 9.3. The Hirer must not, in any circumstances, attempt to start, drive or continue to drive the Vehicle, without the Owner's permission, where:
- a) A warning light is illuminated or the Vehicle is showing other signs of malfunction, failure or overheating;
 - b) The Hirer believes the Vehicle requires mechanical attention; or
 - c) The Vehicle has been involved in an Accident, damaged by water submersion or any other means,
- unless immediate action is required by the Hirer for health and safety purposes or to prevent further damage to the Vehicle or third party property.
- 9.4. The Hirer must ensure that (and procure that all Authorised Drivers ensure that):
- a) All reasonable care is taken when driving and parking the Vehicle;
 - b) The Vehicle is locked and secure at all times when it is not in use, including ensuring that the ignition key is not left in the Vehicle while it is unoccupied; and
 - c) The Vehicle is not exposed to damage from fire or other avoidable risk.

10. The Hirer's Obligations

- 10.1. The Hirer must:
- a) Comply with the terms of the Rental Contract at all times and ensure that all Authorised Drivers are provided with a copy of, and comply with, the Rental Contract;
 - b) Ensure that:
 - i. It promptly provides all information reasonably requested by the Owner from time to time;
 - ii. All information provided to the Owner under or in connection with the Rental Contract is true, complete correct and not misleading;
 - iii. It promptly notifies the Owner of any changes to that information, including the Hirer's details recorded in the Rental Agreement or the Hirer's Uber driver status; and

- c) Notify the Owner, as soon as practicable and in any event within 24 hours, of any complaints, defects, failure or other problem associated with the Vehicle, including equipment failure.

10.2. The Hirer must ensure that:

- a) It takes all reasonable steps to maintain the Vehicle, including regular checks of the oil, water, batteries and tyres.
- b) The Hirer will ensure that:
 - i. The water levels in the radiator and battery;
 - ii. The oil levels in the Vehicle; and
 - iii. The air pressure in the tyres,are maintained at the manufacturer's recommended levels. If the Hirer has any doubts as to what the recommended levels are, the Hirer should contact the Owner immediately;
- c) The odometer or speedometer are not interfered with;
- d) No person interferes with any part of the Vehicle, including in particular, the engine, transmission, braking or suspension systems;
- e) No person interferes with the GPS security system;
- f) Any Authorised Driver carries their drivers licence with them in the Vehicle at all times and will produce it on demand to any law enforcement officer;
- g) No person smokes inside the Vehicle;
- h) A copy of this agreement is kept in the Vehicle at all times and is produced without delay for inspection by an enforcement officer; and
- i) The correct fuel type (as noted on the Rental Agreement) is used.

11. Maintenance, Repairs and Accidents

- 11.1. The Hirer must make the Vehicle available to the Owner at a place nominated by the Owner, for servicing, inspections, repairs or maintenance. Failure to do so will result in a non-delivery Administration Fee.
- 11.2. Subject to clause 16.3, the Owner will, at the Owner's cost, maintain the Vehicle in good running order during the Rental Period, provided that the Hirer will be responsible for the cost of:
 - a) Any replacement windscreens; and
 - b) Tyres damaged, except where the tyre is inspected and confirmed as defective by an Owner approved service centre.
- 11.3. Subject to clause 10.2a), the Hirer shall not arrange or undertake any servicing, repairs, maintenance or recovery of the Vehicle without the Owner's permission (including purchasing a replacement tyre).
- 11.4. In the event of an Accident, the Hirer must:

- a) Obtain the names and addresses of any third parties or witnesses;
 - b) Report the Accident to police and provide a copy of the police report to the Owner;
 - c) Report the Accident to the Owner as soon as practicable, and in any event, within 24 hours;
 - d) Comply with all reasonable and lawful instructions of the Owner (or its agent) in relation to the Vehicle (if any);
 - e) Pay the Owner, on demand, any amount due by the Hirer in respect of the damage arising from the Accident; and
 - f) The Hirer (and/or driver) must not aid or abet any claimant except where required by law or the direction of a court, but must co-operate fully with the Owner, its authorised agent or its insurers in all matters connected with the investigation and conduct of any claim or action.
- 11.5. The Hirer will be liable for all costs associated with towing or otherwise recovering the Vehicle in the event of a single vehicle Accident.
- 11.6. Roadside support:
- a) 24/7 roadside assistance is included in the Weekly Rental for all Mechanical Faults (as determined by the Owner or its authorised repairer) related to the Vehicle.
 - b) Roadside assistance will also be available, at the Hirer's cost, in the event of the Vehicle running out of fuel, flat batteries, flat tyres or other tyre related incidents, lost keys or keys being locked in the Vehicle.
- 11.7. If the Vehicle requires repair or replacement, the decision to supply another Vehicle to the Hirer is at the Owner's sole discretion. A new Bond will be required for any replacement Vehicle.
- 11.8. The Owner reserves the right to charge the Weekly Rental for any period that the Vehicle is unavailable due to repairs or Accident where the Hirer is at fault.

12. Toll Notices and Traffic Offences

- 12.1. The Hirer is liable for all infringement fees, penalties, charges and costs related to:
- a) Traffic offences, including speeding offences and offences in respect of failure to comply with traffic signals;
 - b) Parking offences, including clamping fees; and
 - c) Toll charges and fees,
- ("Infringement Fees")**
- 12.2. The Hirer agrees to pay all Infringement Fees that are incurred by the Hirer (or other driver of the Vehicle) and an Administration Fee for associated administration costs. This Administration Fee will be applicable for each offence or toll charge or fee.

12.3. Subject to the Owner complying with clause 12.4, the Hirer authorises the Owner to debit the Hirer's bank account (or the Bond) for any Infringement Fee and applicable Administration Fees.

12.4. In the event that the Owner receives:

- a) Notice of an Infringement Fee, the Owner will either:
 - i. Send the Hirer a copy of the notice, together with notification that if the Owner receives a reminder notice in respect of the Infringement Fee, the Owner will charge the Hirer the amount of the Infringement Fee plus an Administration Fee; or
 - ii. Provide the necessary information to the relevant authority for such notices to be directed to the Hirer, and charge the Hirer an Administration Fee.
- b) A reminder notice only, the Owner will send the Hirer a copy of the reminder notice together with notification that the Owner will pay the Infringement Fee on the Hirer's behalf and charge the Hirer for the amount of the Infringement Fee plus an Administration Fee.

12.5. The Hirer has the right to:

- a) Challenge, complain about, query or object to any alleged offence which is the subject of an infringement notice or reminder notice, to the issuing enforcement authority; and
- b) Seek a court hearing within 56 days from the date of issue of the infringement notice or 28 days from the date of issue of the reminder notice.

13. Security Tracking Unit

13.1. The Hirer acknowledges that there may be a security tracking unit in the Vehicle and that the Vehicle may be tracked. The Hirer also acknowledges that the Vehicle can be disabled by the Owner triggering the starter motor disabling switch (which prevents the Vehicle from being re-started) if, in the Owner's opinion, the Vehicle is at risk or the Hirer has committed a material breach of its payment obligations (which may include repeated breaches or a series of minor breaches).

13.2. The Hirer acknowledges it is liable for:

- a) Damage to the tracking unit or disabling switch arising from tampering with the unit, or disabling switch or its wiring; and
- b) The cost of a replacement unit or disabling switch in the event that the tracking unit or disabling switch is damaged, lost or stolen.

14. Termination

14.1. Upon expiry of the Minimum Term, either party may terminate the Rental Contract at any time by giving the other party notice, subject to the Minimum Notice Period. The Hirer shall remain liable for the Weekly Rental and any other amounts which arise under the Rental Contract during the Minimum Notice Period.

- 14.2. Notwithstanding the Minimum Term, the Owner may terminate the Rental Contract with immediate effect, and take immediate possession of the Vehicle, at any time by giving written notice to the Hirer where:
- a) The Hirer ceases to be a registered Uber driver or ceases to provide Uber services;
 - b) The Hirer commits a irremediable material breach of the Rental Contract;
 - c) The Hirer commits a material breach of the Rental Contract that is capable of being remedied but which is not remedied within 14 days of it receiving notice of the breach from the Owner;
 - d) The Vehicle is not returned on or before the Return Date;
 - e) The Vehicle is damaged or the Owner considers, on reasonable grounds, that the condition of the Vehicle is unsafe; or
 - f) The Owner, at its discretion, considers the Vehicle is at risk or abandoned.
- 14.3. For the purposes of clauses 14.2b) and 14.2c), repeated breaches or a series of minor breaches may constitute a material breach.
- 14.4. Termination of the Rental Contract shall be without prejudice to the rights of the Owner and the obligations of the Hirer under the Rental Contract or otherwise.
- 14.5. Upon termination of the Rental Contract, unless agreed otherwise:
- a) The Vehicle must be returned to the Owner in accordance with clause 15; and
 - b) All amounts owing under the Rental Contract will become immediately due and payable by the Hirer.

15. Delivery and Return of the Vehicle

- 15.1. The Owner will supply the Vehicle on the Rental Start Date in a safe and roadworthy condition, up to current certificate of fitness standards.
- 15.2. The Hirer and the Owner must, prior to collection, undertake an inspection of the current condition of the Vehicle and agree and record any pre-existing damage to the Vehicle in the Vehicle Assessment Form.
- 15.3. The Hirer must return the Vehicle, on or before the Return Date, to the rental location recorded in the Rental Agreement, in a clean condition and with a full fuel tank.
- 15.4. The Owner reserves the right to charge the Hirer:
- a) The cost of cleaning the Vehicle if the Vehicle is not returned in a clean condition or requires deodorising;
 - b) An Administration Fee if the fuel tank is not full, as well as the cost of filling the fuel tank; and
 - c) An Administration Fee for failing to return the Vehicle on the Return Date, as well as:

- i. A daily rental rate for each additional day that the Vehicle is not returned to the Owner; and
- ii. Any costs incurred by the Owner in recovering the Vehicle.

16. Limitation of Liability and Indemnity

- 16.1. The Hirer and the Owner acknowledge and agree for the purposes of section 5D of the Fair Trading Act 1986 and section 43 of the Consumer Guarantees Act 1993 that:
- a) The Owner and the Hirer are in trade and the services provided under the Rental Contract are being provided and acquired in trade;
 - b) The Owner and the Hirer agree to contract out of the Consumer Guarantees Act 1993 and sections 9, 12A and 13 of the Fair Trading Act 1986, to the extent permitted by law;
 - c) It is fair and reasonable for the Owner and the Hirer to be bound by this clause; and
 - d) The Hirer has been advised, and had an opportunity, to receive independent advice before entering into the Rental Contract.
- 16.2. Except as set out in the Rental Contract, the Owner makes no warranties or other representations with respect to the Vehicle or services provided under the Rental Contract and any implied warranties or representations are excluded to the fullest extent permitted by law.
- 16.3. The Hirer indemnifies and holds the Owner harmless against all liabilities, actions, proceedings, claims, demands, losses, damages, costs and expenses (including all legal costs and expenses on a solicitor and own client basis) ("**Liability**"), including Liability arising as a result of damage to a third party's property or injury or death of any person, which the Hirer suffers or incurs as a result of the misuse of the Vehicle or a breach of the Rental Contract by the Hirer.
- 16.4. To the extent permitted by law, the Owner's liability to the Hirer under or in connection with the Rental Contract, whether in contract, tort (including negligence) or otherwise, is limited to (at the Owner's election):
- a) An amount equal to the Weekly Rental paid by the Hirer to the Owner at the date of the act or omission giving rise to the relevant claim; or
 - b) Supplying a replacement Vehicle.
- 16.5. The Owner will not be liable under or in connection with the Rental Contract, whether in contract, tort (including negligence) or otherwise, for any indirect or consequential loss or damage, or any loss of revenue or profit of any kind, suffered or incurred by the Hirer or any Authorised Driver.

17. Privacy Laws

- 17.1. The Hirer authorises the Driver to collect, use, hold and disclose Personal Information about, or provided by, the Hirer, in accordance with the Privacy Act 1993, this section 17 and/or any other authorisation provided by the Hirer to the Owner from time to time.

- 17.2. The Owner may collect Personal Information (from the Hirer, Authorised Drivers and third parties) in connection with this Rental Contract, including to:
- a) Assess the Hirer's request to hire a Vehicle, including to assess the Hirer's creditworthiness and to undertake routine background checks;
 - b) Generally do business with the Hirer, including supplying, and assessing the Hirer's satisfaction with, the rental services and the Vehicle;
 - c) Fulfil the Owner's obligations and exercise the Owner's rights and powers under the Rental Contract (including to register a security interest and to collect any amounts owing by the Hirer to the Owner from time to time);
 - d) Provide the Hirer with information, offers and other promotional material (including by email and other electronic means) about the Owner's products and services, and the products and services of related third parties that the Owner considers may be of interest to the Hirer; and
 - e) Any purpose related to the above.
- 17.3. To the extent that the Hirer provides the Owner with any information about any third party (such as an Authorised Driver), the Hirer confirms that it has that person's consent to provide their Personal Information to the Owner and for the Owner to use that information in accordance with this section 17.
- 17.4. The Hirer agrees that the Owner may from time to time obtain from credit reporting agencies all information that the Owner reasonably requires to check the creditworthiness of the Hirer, and such persons are authorised to release that information. The Hirer acknowledges that credit reporting agencies may store, and disclose the Hirer's Personal Information (including default information) to other organisations, for the purposes of their credit reporting and/or debt collection services.
- 17.5. Personal Information may be disclosed to:
- a) The Owner's service providers, for the purposes set out in clause 17.2;
 - b) Uber for purposes related to the supply of the rental services and/or confirmation of the Hirer's Uber registration;
 - c) Insurers and any third parties involved in an Accident with the Vehicle while on hire to the Hirer; and
 - d) Any organisation responsible for the processing or handling of traffic, toll or parking related infringements.

18. Dispute Resolution

- 18.1. If the Hirer believes there has been an error in the handling of the Hirer's account or the Hirer has a complaint, the Hirer is invited to first raise the issue with our staff who will do all that they reasonably can to rectify any errors or resolve the Hirer's complaint. If the Hirer's concern is not satisfactorily resolved, the Hirer must refer the issue to our Internal Complaints Process ("ICP").

- 18.2. Upon referral of a complaint to our ICP, our ICP officer will be in contact within 48 hours of receipt to acknowledge referral and begin investigating.
- 18.3. Our ICP officer will do their best to find a satisfactory resolution and will advise the Hirer of the outcome within 21 days unless external factors outside our control require further time.
- 18.4. Referrals to our ICP must be made in writing and submitted via email or post to one of the below:

Email: info@moderideshare.co.nz

Post: Attn ICP Officer

Mode Rentals
10 Doncaster St,
Airport Oaks, Auckland, 2022.

19. Liability and Insurance

- 19.1. The Hirer agrees to comply with and be bound by (and procure that each Authorised Driver complies with and agrees to be bound by) all the terms, conditions, limitations and exclusions under the Owner's policies of insurance, from time to time. A copy of the Owner's insurance policy as at the date of the Rental Agreement was provided to the Hirer together with the Rental Contract (and is also available upon reasonable request). The Owner's insurance may be updated on notice to the Hirer by the Owner from time to time. All references to insurance policies in this section 19 are to the Owner's current policies of insurance from time to time.
- 19.2. The Hirer understands and acknowledges that:
- a) The Vehicle is insured for third party vehicle and property damage upon and subject to the terms, conditions and limitations under the Owner's insurance policy;
 - b) The Hirer is liable to pay the Excess to the Owner in respect of any damage (whether to the Vehicle or third party property) or loss incurred from the Rental Start Date until the Vehicle is returned to the Owner;
 - c) If the Hirer has elected to purchase the Collision Damage Waiver the amount the Hirer must contribute to the loss or damage will be limited to the CDW-Excess. The Hirer acknowledges that, in the event of multiple incidents, the Collision Damage Waiver will apply only once per annum, and only to the damage or loss that occurred first. Once the Collision Damage Waiver has been used in any 12 month period, the full Excess specified in clause 4 of the Rental Agreement will apply;
 - d) Subject to clause 19.2c), the Hirer is liable to pay the Excess for each and every:
 - i. Accident; or
 - ii. Other incident involving damage to, or loss of, the Vehicle or third party property;
 - e) Where a third party is at fault, the Owner will use reasonable endeavours to refund the Excess to the Hirer (or where applicable,

credit the Bond) as quickly as possible, however, the Hirer acknowledges that the handling of any such claim is subject to resolution with the third party and/or the third party's insurer (if any).

- f) The Hirer is responsible for the total cost of any damage or loss (whether to the Vehicle or third party property), and any Collision Damage Waiver purchased will be void, if:
 - i. the Hirer breaches the Rental Contract; or
 - ii. the damage or loss is covered by any of the exclusions set out in clause 20.

20. Exclusions

20.1. The Hirer acknowledges and agrees that the Hirer is responsible for all damage, costs and liability, of whatever nature, arising out of, or incurred in connection with:

- a) Any damage caused by driving the Vehicle under the influence of alcohol, drugs, or any other substance that impairs the drivers ability to drive the Vehicle;
- b) Any loss or damage to personal belongings;
- c) Any loss or damage where:
 - i. The Vehicle is driven by a person who fails, or refuses to supply a blood or breath sample as required by law;
 - ii. The Vehicle is driven in an unsafe or un-roadworthy condition, where the Hirer is aware, or ought reasonably be aware of, the condition of the Vehicle and fails to notify the Owner and/or deliver the Vehicle for inspection, servicing or maintenance;
 - iii. An Authorised Driver is deemed by local authorities to have been careless, negligent or reckless, or where the Authorised Driver has wilfully failed to abide by the applicable road rules;
 - iv. The Vehicle is involved in an Accident and the driver is charged with an infringement or offence;
 - v. The Vehicle is operated in any race, speed test, rally or contest or where the Vehicle is driven on any road described in clause 9.2f)iv;
 - vi. The Vehicle is driven by any person other than an Authorised Driver;
 - vii. The Vehicle is driven by any person who is disqualified from driving, has had their licence revoked or is in breach of any conditions of their licence; or
 - viii. The Vehicle is operated outside the Rental Period or in breach of the terms of the Rental Contract;
- d) The theft or loss of the Vehicle as a result of wilful, negligent or reckless behaviour of an Authorised Driver;
- e) The fitting of snow chains or roof racks to the Vehicle;

- f) Any damage associated with the use of incorrect fuel, fuel contamination or incorrect oil; and
- g) Replacing keys which have been lost or stolen.

20.2. The Hirer acknowledges that the Hirer's liability under clause 20.1 includes any loss or damage to a third party's vehicle or property.

21. General

21.1. Applicable law

The Rental Contract is governed by and is to be construed in accordance with the laws of New Zealand. The parties submit to the exclusive jurisdiction of the New Zealand Courts.

21.2. Miscellaneous

- a) The Rental Contract constitutes the entire agreement of the parties concerning the subject matter of the contract, and supersedes and cancels any previous representations, agreements, understandings or arrangements (whether written or oral) between the parties.
- b) All rights and remedies provided in the Rental Contract are cumulative and not exclusive of any other rights or remedies that may be available to the parties, whether provided by law, equity, statute, in any clause of the Rental Contract or any other agreement.
- c) A waiver of any breach of the Rental Contract or any right, power or remedy under, or in connection with, the Rental Contract (including a right of termination) is not effective unless that waiver is in writing and is signed by the party granting the waiver. A failure to exercise, a delay in exercising, or a partial exercise of, any right, power or remedy under, or in connection with, the Rental Contract does not operate as a waiver of such right, power or remedy. A waiver of any breach is not, or is not deemed to be, a waiver of any other or subsequent breach.
- d) The Hirer may not assign, novate, transfer or otherwise dispose of all or any part of its rights or obligations under the Rental Contract without the prior written consent of the Owner.
- e) If a provision of the Rental Contract is or becomes illegal, invalid or unenforceable then:
 - i. Where that provision can be modified to give it a valid and enforceable operation of a partial nature, it must be modified to the minimum extent necessary to achieve that result; and
 - ii. In any other case the provision must be severed from the Rental Contract, in which event the remaining provisions of the Rental Contract will operate as if the severed provision had not been included.
- f) Termination or expiry of the Rental Contract will not affect any provisions of the Rental Contract which are expressed to, or by implication are intended to, survive termination or expiry of the Rental Contract, including clauses 6 (payment), 15 (return of the Vehicle), 14 (termination), 16 (limitation of liability and indemnity), 18 (dispute

resolution) 19 (liability and insurance), 20 (exclusions), 21 (general) and 22 (definitions).

- g) A communication under the Rental Contract is not effective until the party it is addressed to receives it. For this purpose, a communication will be treated as being received where:
- i. In the case of personal delivery, when left at the address of the recipient;
 - ii. In the case of pre-paid post, three business days after (exclusive of) the date of posting; and
 - iii. In the case of email, on the date and time at which it enters the recipient's information system.

21.3. The Owner will be entitled to enforce its rights under the Rental Contract, notwithstanding that the Owner may not have signed the Rental Agreement.

22. Definitions

22.1. Definitions

In these Terms and Conditions, capitalised terms have the meaning given to them below unless the context otherwise requires:

'Accident' means a collision or impact between the rental Vehicle and another Vehicle or object or an attempted break in or theft of the Vehicle;

'Administration Fee' means the applicable administration fee published on Mode Rental's website from time to time;

'Authorised Driver' means the Hirer and any additional person specified in the Rental Agreement (or otherwise authorised by us in writing to drive the Vehicle), provided we have a copy of their licence details on file;

'Bond' means the amount paid by the Hirer in accordance with clause 5;

'Collision Damage Waiver' means the excess reduction option described in clause 19.1d) which may be purchased by the Hirer for an additional fee;

'CDW-Excess' means the amount identified as the CDW-Excess in the Rental Agreement;

'Distance Charge' means the rate per kilometre (km) recorded in the Rental Agreement and payable by the Hirer for any distance travelled in the Vehicle in excess of the weekly travel distance allowance (for example, if the weekly travel distance allowance is 500 km, then the Hirer shall be liable for the distance charge for any kms travelled over and above the 500 km weekly allowance);

'Excess' means the amount identified as the Excess in the Rental Agreement;

'GST' means any goods and services tax payable under the Goods and Services Tax Act 1985;

'Hirer' means the registered Uber driver named as the hirer in the Rental Agreement;

'ICP' means Mode Rental's Internal Complaints Process;

'Infringement Fees' means all infringement fees, penalties, charges and costs described in clause 12.1;

'Mechanical Faults' means a mechanical or electrical failure, which causes the Vehicle to be immobilised or renders it unsafe to drive provided any such failure or immobilisation is not caused by an Accident;

'Minimum Notice Period' means a minimum of two weeks (or such other period recorded in the Rental Agreement) written notice;

'Minimum Term' means the minimum Rental Period recorded in the Rental Agreement;

'Mode Rentals' means Mode Rentals Limited (2220039);

'Owner' means Mode Rentals;

'Personal Information' means information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identity is apparent or can reasonably be ascertained or is reasonably identifiable from the information or opinion;

'PPSA' means the Personal Properties Security Act 1999;

'Rental Agreement' means the rental agreement form recording the Hirer's details and the variable terms and conditions on which the Owner has agreed to hire out the Vehicle;

'Rental Contract' means the agreement entered into between you and Mode Rentals which comprises the Rental Application Form, Rental Agreement, these Terms and Conditions and the Vehicle Assessment Form, as amended by agreement between the parties from time to time;

'Rental Period' has the meaning given in clause 2.1, and includes any extension to the Rental Period agreed to in writing by the Owner;

'Rental Start Date' means the date recorded in clause 3 of the Rental Agreement;

'Return Date' is the effective date of termination of the Rental Contract pursuant to clause 6.4, 14.1 or 14.2 (as the case may be);

'Terms and Conditions' means these Rental Terms and Conditions;

'Unsealed Road' means a road that has been formed and constructed but is not sealed with a hard material such as tar, bitumen or concrete;

'Vehicle' means the Vehicle described in the Rental Agreement and hired by the Hirer, and includes all parts, accessories, audio equipment, tools and equipment and any replacement Vehicle provided by us;

'Vehicle Assessment Form' means the accompanying assessment of the Vehicle recording the condition of the Vehicle at the commencement of the Rental Contract, including the agreed exterior condition;

'we', 'us' or 'our' means Mode Rentals or one of its franchisees or affiliates as shown in the Rental Agreement;

'Weekly Rental' means the weekly rate payable by the Hirer for the hire of the Vehicle as recorded in the Rental Agreement or determined pursuant to clause 6.4; and

'you' or 'your' means the person renting the Vehicle (being the only person who is permitted under the Rental Agreement to drive the Vehicle for the purpose of providing Uber Services) or any Authorised Driver shown in the Rental Agreement.

22.2. Interpretation

In the Rental Contract:

- a) Headings are for convenience only and do not affect interpretation;
- b) A reference to a clause is a reference to a clause of these Terms and Conditions or, where the context requires, the Rental Agreement;
- c) The singular shall include the plural and vice versa and reference to any gender shall include all genders;
- d) Any references to law includes any national or local law, by-law, statute, act, regulation, other enactment, New Zealand Standard, code, permit, consent, district plan, regional plan, approved code of practice, order, common law, ruling or other requirement or rule of law or any rule, code or other requirement promulgated by a government authority or other regulatory body;
- e) References to any statute include any amendment to, or replacement of, that statute and any subordinate legislation made under it, in each case whether before or after the date of the Rental Contract;
- f) Any reference to dollars and \$ is to New Zealand currency;
- g) A reference to a person includes any type of entity or body of persons, whether or not it is incorporated or has separate legal identity;
- h) "Including" and similar words shall be construed as "including, without limitation"; and
- i) The Rental Contract must not be construed adversely to the Owner just because the Owner prepared it or caused it to be prepared.

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